



House of Representatives

General Assembly

File No. 265

February Session, 2002

Substitute House Bill No. 5407

House of Representatives, April 2, 2002

The Committee on Planning and Development reported through REP. DAVIS of the 50th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING LOCAL PARTICIPATION IN THE SITING OF CELLULAR TOWERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 16-50i of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2002*):

4 (a) "Facility" means: (1) An electric transmission line of a design
5 capacity of sixty-nine kilovolts or more, including associated
6 equipment but not including a transmission line tap, as defined in
7 subsection (e) of this section; (2) a fuel transmission facility, except a
8 gas transmission line having a design capability of less than two
9 hundred pounds per square inch gauge pressure; (3) any electric
10 generating or storage facility using any fuel, including nuclear
11 materials, including associated equipment for furnishing electricity but
12 not including an emergency generating device, as defined in

13 subsection (f) of this section, or a facility (i) owned and operated by a
14 private power producer, as defined in section 16-243b, (ii) which is a
15 qualifying small power production facility or a qualifying
16 cogeneration facility under the Public Utility Regulatory Policies Act of
17 1978, as amended, or a facility determined by the council to be
18 primarily for a producer's own use, and (iii) which has, in the case of a
19 facility utilizing renewable energy sources, a generating capacity of
20 one megawatt of electricity or less and, in the case of a facility utilizing
21 cogeneration technology, a generating capacity of twenty-five
22 megawatts of electricity or less; (4) any electric substation or
23 switchyard designed to change or regulate the voltage of electricity at
24 sixty-nine kilovolts or more or to connect two or more electric circuits
25 at such voltage, which substation or switchyard may have a substantial
26 adverse environmental effect, as determined by the council established
27 under section 16-50j, and other facilities which may have a substantial
28 adverse environmental effect as the council may, by regulation,
29 prescribe; (5) such community antenna television towers and head-end
30 structures, including associated equipment, which may have a
31 substantial adverse environmental effect, as said council shall, by
32 regulation, prescribe; and (6) such telecommunication towers,
33 including associated telecommunications equipment, owned or
34 operated by the state, a public service company or a certified
35 telecommunications provider or used in a cellular system, as defined
36 in the Code of Federal Regulations Title 47, Part 22, as amended, or
37 used in personal communications services, as defined in the Code of
38 Federal Regulations Title 47, Part 24, as amended, which may have a
39 substantial adverse environmental effect, as said council shall, by
40 regulation, prescribe.

41 Sec. 2. Subsection (a) of section 16-50k of the general statutes, as
42 amended by section 7 of public act 01-49, is repealed and the following
43 is substituted in lieu thereof (*Effective July 1, 2002*):

44 (a) Except as provided in subsection (b) of section 16-50z, no person
45 shall exercise any right of eminent domain in contemplation of,
46 commence the preparation of the site for, or commence the

47 construction or supplying of a facility, or commence any modification
48 of a facility, that may, as determined by the council, have a substantial
49 adverse environmental effect in the state without having first obtained
50 a certificate of environmental compatibility and public need,
51 hereinafter referred to as a "certificate", issued with respect to such
52 facility or modification by the council, except fuel cells with a
53 generating capacity of ten kilowatts or less which shall not require
54 such certificate. Any facility with respect to which a certificate is
55 required shall thereafter be built, maintained and operated in
56 conformity with such certificate and any terms, limitations or
57 conditions contained therein. Notwithstanding the provisions of this
58 subsection, the council shall, (1) in the exercise of its jurisdiction over
59 the siting of generating facilities, approve by declaratory ruling [(1)]
60 (A) the construction of a facility solely for the purpose of generating
61 electricity, other than an electric generating facility that uses nuclear
62 materials or coal as fuel, at a site where an electric generating facility
63 operated prior to July 1, 1998, and [(2)] (B) the construction or location
64 of any fuel cell, unless the council finds a substantial adverse
65 environmental effect, or (2) in the exercise of its jurisdiction over the
66 siting of a telecommunications tower, as specified in subdivision (6) of
67 subsection (a) of section 16-50i, as amended by this act, declare the
68 pending certification proceeding moot and approve by declaratory
69 ruling the construction of such a tower when such tower has been
70 approved or has been found to be in compliance with municipal
71 regulations or a telecommunications plan of development by the site
72 municipality, unless the council finds that the relevant pending
73 proceeding is necessary because there is evidence that such tower may
74 be unnecessary or may cause a substantial adverse environmental
75 effect.

76 Sec. 3. Subsection (e) of section 16-50l of the general statutes is
77 repealed and the following is substituted in lieu thereof (*Effective July*
78 *1, 2002*):

79 (e) At least sixty days prior to the filing of any application with the
80 council, the applicant shall consult with the municipality in which the

81 facility may be located and with any other municipality required to be
82 served with a copy of the application under subdivision (1) of
83 subsection (b) of this section concerning the proposed and alternative
84 sites of the facility. Such consultation with the municipality shall
85 include, but not be limited to good faith efforts to meet with the chief
86 elected official of the municipality. At the time of the consultation, the
87 applicant shall provide the chief elected official and the chairpersons of
88 the zoning commission, planning commission, planning and zoning
89 commission, conservation commission or inland wetland agency of
90 each municipality in which any portion of a facility is to be located
91 with any other technical reports concerning the public need, the site
92 selection process and the environmental effects of the proposed
93 facility. The municipality may conduct public hearings and meetings
94 as it deems necessary for it to advise the applicant of its
95 recommendations concerning the proposed facility. Within sixty days
96 of the initial consultation, the municipality [shall] may develop a
97 written record and issue its recommendations to the applicant. No
98 later than fifteen days after submitting the application to the council,
99 the applicant shall provide to the council all materials provided to the
100 municipality and a summary of the consultations with the
101 municipality including all recommendations issued by the
102 municipality.

103 Sec. 4. Subsection (a) of section 16-50n of the general statutes is
104 repealed and the following is substituted in lieu thereof (*Effective July*
105 *1, 2002*):

106 (a) The parties to a certification or amendment proceeding or to a
107 declaratory ruling proceeding shall include: (1) The applicant,
108 certificate holder, or petitioner; (2) each person entitled to receive a
109 copy of the application or resolution under section 16-50l, as amended
110 by this act, if such person has filed with the council a notice of intent to
111 be a party; (3) any domestic or qualified nonprofit corporation or
112 association formed in whole or in part to promote conservation or
113 natural beauty, to protect the environment, personal health or
114 biological values, to preserve historical sites, to promote consumer

115 interests, to represent commercial and industrial groups or to promote
116 the orderly development of the areas in which the facility is to be
117 located, if it has filed with the council a notice of intent to be a party;
118 [and] (4) the zoning commission, planning commission, planning and
119 zoning commission, conservation commission or inland wetland
120 agency of each municipality in which any portion of a facility is to be
121 located, unless such local bodies decline to participate as parties to the
122 proceeding; and (5) such other persons as the council may at any time
123 deem appropriate.

124 Sec. 5. Subsection (d) of section 16-50x of the general statutes is
125 repealed and the following is substituted in lieu thereof (*Effective July*
126 *1, 2002*):

127 (d) Any town, city or borough zoning commission and inland
128 wetland agency may regulate and restrict the proposed location of a
129 facility, as defined in subdivisions (3), [and] (4) and (6) of subsection
130 (a) of section 16-50i, as amended by this act. The application to such a
131 local body shall be the same application filed with the council. The
132 applicant shall file the application with such a local body at the same
133 time the applicant files it with the council. Such local bodies may apply
134 standards developed by town ordinances, regulations or a plan of
135 development created in accordance with section 8-35a, and make all
136 orders necessary to the exercise of such power to regulate and restrict,
137 which orders shall be in writing and recorded in the records of their
138 respective communities, and written notice of any order shall be given
139 to each party affected thereby. Such a local body shall make any such
140 order (1) not more than sixty-five days after an application has been
141 filed with the council for the siting of a facility described in
142 subdivision (3) of subsection (a) of section 16-50i, as amended by this
143 act, or (2) not more than thirty days after an application has been filed
144 with the council for the siting of a facility described in subdivision (4)
145 or (6) of subsection (a) of section 16-50i, as amended by this act. Each
146 such order shall be subject to the right of appeal within thirty days
147 after the giving of such notice by any municipality required to be
148 served with a copy of the application under subdivision (1) of

149 subsection (b) of section 16-50l or by any party aggrieved to the
150 council, which shall have jurisdiction, in the course of any proceeding
151 on an application for a certificate or otherwise, to affirm, modify or
152 revoke such order or make any order in substitution thereof by a vote
153 of six members of the council. In the case of a facility described in
154 subdivision (6) of subsection (a) of section 16-50i, as amended by this
155 act, each such order shall be subject to the right of appeal within thirty
156 days after the giving of such notice by any municipality required to be
157 served with a copy of the application under subdivision (1) of
158 subsection (b) of section 16-50l or by any party aggrieved to the
159 council, which shall have jurisdiction, in the course of any proceeding
160 on an application for a certificate or otherwise, to affirm, modify or
161 revoke such order or make any order in substitution thereof by a
162 majority vote of not less than seven members of the council.

163 Sec. 6. (NEW) (*Effective October 1, 2002*) The Connecticut Siting
164 Council shall maintain a telecommunications tower database that
165 includes the location, type and height of all telecommunications towers
166 in the state. Said database shall be available for inspection by the
167 public. The council shall supply any information contained in the
168 database to a municipality, upon request. A municipality may develop,
169 in consultation with the council, a comprehensive telecommunications
170 plan of development for towers using said database and any other
171 available resources including, but not limited to, council resources.

172 Sec. 7. Subsection (a) of section 16-50x of the general statutes is
173 repealed and the following is substituted in lieu thereof (*Effective July*
174 *1, 2002*):

175 (a) Notwithstanding any other provision of the general statutes to
176 the contrary, except as provided in section 16-243, the council shall
177 have exclusive jurisdiction over the location and type of facilities and
178 over the location and type of modifications of facilities subject to the
179 provisions of subsection (d) of this section. In ruling on applications
180 for certificates for facilities and on requests for shared use of facilities,
181 the council shall give such consideration to other state laws and

182 municipal regulations as it shall deem appropriate. Whenever the
183 council certifies or approves a use of a facility pursuant to this chapter,
184 such certification or approval shall satisfy and be in lieu of all
185 certifications, approvals and other requirements of state and municipal
186 agencies. [in regard to any questions of public need, convenience and
187 necessity for such facility.] Said applicant shall file such certificate or
188 approval with the municipality in which such facility is located and
189 pay such municipality all fees required by chapter 541 prior to the
190 construction of such facility.

191 Sec. 8. Subsection (c) of section 16-50aa of the general statutes is
192 repealed and the following is substituted in lieu thereof (*Effective July*
193 *1, 2002*):

194 (c) (1) A person, firm, corporation or public agency which transmits
195 or receives signals in the electromagnetic spectrum for a commercial or
196 public purpose pursuant to a Federal Communications Commission
197 license may submit a request, on a form specified by the council, to the
198 owner of a facility that the owner permit shared use of the facility. If
199 such an owner agrees to the proposed shared use, the entity which
200 would share the use of the facility shall comply with reasonable
201 conditions established by the owner concerning the use of the facility.
202 The council may arbitrate any issue between the owner of the facility
203 and the requesting entity concerning the establishment of or
204 compliance with any such conditions. An owner of a facility which
205 agrees to shared use of the facility pursuant to this section may request
206 in writing that the council approve the proposed shared use of the
207 facility. If the council finds that the proposed shared use of the facility
208 is technically, legally, environmentally and economically feasible and
209 meets public safety concerns, the council shall issue an order
210 approving such shared use. Within sixty days after receipt of said
211 request, the council shall issue its order in writing.

212 (2) If an owner of a facility refuses permission for the proposed
213 shared use, the requesting entity may bring the issue of the proposed
214 shared use to the council. Upon written request by the requesting

215 entity, the council shall initiate a feasibility proceeding to determine
 216 whether the proposed shared use is technically, legally,
 217 environmentally and economically feasible and meets public safety
 218 concerns. A feasibility proceeding shall include a hearing in
 219 accordance with the provisions of chapter 54, to be held (A) at a
 220 location determined by the council, and (B) not later than ninety days
 221 following the council's receipt of the written request for such a
 222 proceeding. The council shall provide the owner of the facility, the
 223 entity requesting the feasibility proceeding and the municipality in
 224 which the facility is located with notice of the proceeding not later than
 225 thirty days preceding the hearing. In a feasibility proceeding, the
 226 council shall render a decision upon the record, not later than one
 227 hundred eighty days following the council's receipt of the written
 228 request for such a proceeding, stating whether the proposed shared
 229 use of the facility is technically, legally, environmentally and
 230 economically feasible and meets public safety concerns. The council
 231 shall include appropriate findings in its decision. If the council
 232 determines that the proposed shared use of the facility is technically,
 233 legally, environmentally and economically feasible and meets public
 234 safety concerns, the decision shall include an order requiring the
 235 owner of the facility to permit the proposed shared use upon such
 236 terms, conditions or limitations as the council determines appropriate.

This act shall take effect as follows:	
Section 1	<i>July 1, 2002</i>
Sec. 2	<i>July 1, 2002</i>
Sec. 3	<i>July 1, 2002</i>
Sec. 4	<i>July 1, 2002</i>
Sec. 5	<i>July 1, 2002</i>
Sec. 6	<i>October 1, 2002</i>
Sec. 7	<i>July 1, 2002</i>
Sec. 8	<i>July 1, 2002</i>

ET

Joint Favorable Subst. C/R

PD

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Joint Favorable

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note**State Impact:**

Fund-Type	Agency Affected	Current FY \$	FY 03 \$	FY 04 \$
CC&PUCF - Cost	Siting Council, CT	-	Minimal	Minimal

Note: CC&PUCF=Consumer Counsel and Public Utility Control Fund

Municipal Impact: None

Explanation

The bill will result in a minimal cost to the Connecticut Siting Council through the requirement that the council maintain a database of telecommunication towers. This database will include the height, location and type of towers in the state. The minimal cost will include postage for requests of cellular tower information from municipalities.

OLR Bill Analysis

sHB 5407

AN ACT CONCERNING LOCAL PARTICIPATION IN THE SITING OF CELLULAR TOWERS**SUMMARY:**

This bill codifies a recent federal court decision that gives the Connecticut Siting Council jurisdiction over personal communications systems (PCS) towers. (Previously, the council interpreted the law to give local agencies jurisdiction over such towers.) Two other cases regarding jurisdiction over these facilities are pending before the state Supreme Court. By law, the council has jurisdiction over cellular towers that use a similar technology to provide wireless telecommunications services. A council certificate is required to build the telecommunications and energy facilities under the council's jurisdiction.

The bill allows municipalities to adopt orders to "regulate and restrict" the location of cellular and PCS towers and modifies their power to issue such orders with regard to electric power plants and substations. It allows the council to modify, revoke, or affirm such orders that apply to towers, only by a vote of seven of its nine members. It requires developers of towers and energy facilities subject to the council's jurisdiction to provide technical reports to local land use agencies and makes it easier for these agencies to participate in the council's proceedings.

The bill requires the council to maintain a tower database. It allows the council to approve the location of towers using an expedited process (a declaratory ruling) when the tower complies with local regulations.

By law, an entity licensed by the Federal Communications Commission (FCC) to use the airwaves for commercial or public purposes can ask the council to approve a tower-sharing agreement with a tower owner. The bill requires that the council issue its decision in writing within 60 days after receiving the request. By law, the council has 90 days to act if the tower owner refuses permission to share the use of the tower and the FCC licensee asks the council to

order it to do so.

Under current law, the council's issuing a certificate satisfies and takes the place of all other requirements for state or local approval with regard to the public need, convenience, and necessity for the facility. The bill instead specifies that when the council issues a certificate or approval this satisfies and takes the place of all other requirements for state or local approval. Read literally, this would mean that if a power plant obtained a certificate, it would not need to obtain Department of Environmental Protection approval for its air emissions.

The bill requires the entity that has obtained a certificate or approval to file it with municipality where the facility is located and pay the municipality all of the fees required under the building and related codes.

EFFECTIVE DATE: July 1, 2002, except for establishing the database, which is effective October 1, 2002

PARTICIPATION BY LOCAL LAND USE AGENCIES

By law, the council has jurisdiction over energy facilities such as power plants, distribution substations, and gas pipelines, as well as certain telecommunications towers. At least 60 days before filing an application for a council certificate, the prospective developer of any such facility must consult with the proposed host municipality and any other municipality entitled to notice of the application. (These include the municipalities containing the alternative sites for the facility and any municipality whose border is within 2,500 feet of the facility.)

The bill requires the developer to provide technical reports about the proposal to the chairpersons of the zoning, planning, planning and zoning, and conservation commissions and inland wetland agencies of any municipality in which any part of the facility may be located. These technical reports cover the public need for the facility, its environmental effects, and the site selection process. By law, the developer must already provide these reports to the chief elected municipal officials.

The bill allows, rather than requires, the municipality to issue recommendations to the developer. It allows the municipality to

develop a written record.

The law entitles a wide range of entities, including local land use agencies, to participate as parties in council proceedings if they file notice of intent. The bill automatically makes them parties unless they opt out.

RESTRICTION OF TOWER AND OTHER FACILITY LOCATIONS

The bill allows zoning commissions and inland wetland agencies to regulate and restrict the location of cellular and PCS towers. They already have this right with regard to electric power plants and substations.

The bill requires the developer of the tower or electric facility to file the same application with the local agencies as it files with the council, and at the same time. It allows the local bodies to apply to each type of facility the standards established by town ordinances, regulations, or the municipal plan of development.

Under the bill, any party to the certification proceeding for a tower who is aggrieved by the local body's order, or any municipality entitled to notice of this proceeding, can appeal the order to the council. The council, by vote of seven of its nine members, can affirm, modify, or revoke the local body's order or issue a substitute order. By law, the council's ability to take these actions regarding an electric facility requires six votes.

DATABASE

The bill requires the council to maintain a database, available for public inspection, that includes the location, type, and height of all towers in the state. The council must provide information in the database to a municipality upon request.

A municipality may, in consultation with the council, develop a comprehensive telecommunications plan of development for towers. It may use the database and other resources, including those of the council, in establishing the plan.

DECLARATORY RULINGS

Under the bill, if the council determines that a proposed tower has been approved by or complies with municipal regulations or a municipal telecommunications development plan, it can declare the certification proceeding moot and approve the application by declaratory ruling. The council cannot do this if it finds that the proceeding is needed because there is evidence that the tower is unnecessary or that it may cause substantial environmental harm.

BACKGROUND

Related Federal Law

The 1996 Telecommunications Act allows states and municipalities to regulate the siting of wireless facilities, subject to several restrictions (47 USC § 332(c)). (Wireless includes cellular, PCS, and several technologies not addressed by the bill.) Among other things, states and municipalities cannot "zone out" such facilities, unreasonably discriminate among wireless service providers. Appeals of state or local decisions on wireless facilities can be filed in state or federal court.

Related Court Cases

State law gives the siting council exclusive jurisdiction over cellular towers and related equipment. Sprint Spectrum LP sued the council in federal court arguing that PCS is a form of cellular telecommunications, as defined by this law, and thus PCS facilities are subject to the council's jurisdiction. It also argued that the state's bifurcated system violated a provision of the federal law that bars unreasonable discrimination among providers of wireless services.

The court ruled in Sprint's favor on the first count, thereby bringing PCS towers under the council's jurisdiction. The court did not reach the second count. The U.S. Court of Appeals for the 2nd Circuit subsequently upheld the court's ruling (*Sprint Spectrum LP v. Connecticut Siting Council*, 274 F. 3d 674 (2d Cir. 2001)) .

The state Supreme Court is currently considering *Town of Westport v. Connecticut Siting Council* (docket SC 16600) and *Cellco Partnership v. Westport Zoning Board of Appeals* (docket SC 16601). In these cases, the town asserts that (1) PCS towers are not covered by the definition of cellular telecommunications and (2) in cases where a tower has both PCS and cellular antennas, both Siting Council and local approvals are

required. The Supreme Court is not bound by the 2nd Circuit's decision, but uses its decisions as persuasive authority.

Related Bills

SHB 5412, "An Act Concerning Shared Jurisdictions Over The Siting of Telecommunications Tower," favorably reported by the Planning and Development Committee, moves most of the siting authority for telecommunications towers from the siting council to municipalities, provided municipalities take certain steps. The bill affects towers used to provide PCS and cellular service, and other towers currently regulated by the council.

HB 5471, "An Act Concerning Municipal Jurisdiction over Telecommunications Towers Providing Personal Communications Services," favorably reported by the Program Review and Investigations Committee, gives zoning commissions jurisdiction over PCS towers and related equipment. It allows the commissions to regulate the location, height, size, location, and number of these facilities. It implicitly removes these facilities from the siting council's jurisdiction. The bill also requires anyone applying for approval of a PCS tower by a zoning commission or board of appeals to provide written notice of the application to the siting council. The presiding officer of the commission or board of appeals must (1) give the council intervenor status at any hearing on the application and (2) specify the council's intervenor rights.

HB 5472, "An Act Concerning Siting Council Decisions and a Telecommunications Towers Database," reported favorably by the Program Review and Investigations Committee, requires the council to (1) include more information in its decisions on towers and (2) maintain a telecommunications towers database.

sSB 154 "An Act Concerning State Approval of Municipally Approved Telecommunications Towers," reported favorably by the Energy and Technology Committee, requires the council to approve by declaratory ruling the construction of a tower that had been approved by a municipality before December 17, 2001 (the date of the 2nd District decision). This provision does not apply if the council finds that (1) the telecommunications tower would substantially harm the environment, (2) there is insufficient public need for the tower, or (3) the municipality's decision conflicts with the state's tower sharing policies

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute Change of Reference

Yea 16 Nay 0

Planning and Development Committee

Joint Favorable Report

Yea 16 Nay 1